No. 79

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, PETITIONER

v.

THE F. & M. SCHAEFER BREWING CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

J. LEE RANKIN,
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judgment he must indicate that fact by some suc
language as "and I hereby render judgment for th
plaintiff against the defendant in the sum of $5(
plus costs."

Even where the intent is clear, a mere expression
views is not a judgment; it must be a judicial con
mand of sufficient precision to be carried out. Firs
it must be in operative or mandatory language suc
is: "It is ordered * * *", or "It is hereby adjudge
* * *". Second, a judgment must contain the mi
imum data as to what is the order of the court. Th
Rules require that the notation of a judgment in th
civil docket contain the "substance" of the judgmer
The judgment itself, we submit, must also contain th
substance of the judgment. It should at least indica
the successful party and the amount of the jud
ment—who is to pay what to whom.

II

A. Even if the opinion of the district judge
April 14th were found to constitute a "judgment
there was no *entry* of judgment until May 24th. Th
time for appeal runs from the entry of judgmer
which requires a notation of the substance of the jud
ment in the civil docket. Rule 79 (a) provides th
the docket show the "nature" of all papers filed a
in addition show the "substance" of each judgmer

Under Rule 58 judgment is not effective before su
entry. It thus appears that under the Rules t
docket must both show the fact that the court's acti
is a judgment, and also show its substance. The opi

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ions of other courts of appeals agree that to fulfill this requirement a notation must identify the action by the use of the word "judgment" (or a comparable term) and at least indicate the name of the successful party.

B. The notation on April 14th was inadequate to meet the requirements of Rule 79 (a). The clerk's entry on that day was:

> Decision rendered on motion for summary judgment. Motion granted. See opinion on file.

This entry did not identify the court action as the judgment of the court—it did not show its "nature". Also it failed to show the substance of a judgment. There was no way of telling from the docket entries which party had filed the motion for summary judgment; no way of knowing which party had won the case. There was also no indication of the amount, if any, of the judgment. The total inadequacy of the April 14th notation as an entry of judgment is demonstrated by the entry on May 24th, the day on which we contend judgment was entered:

> Judgment filed and docketed against defendant in the sum of $7189.57 with interest of $542.80 together with costs $37 amounting in all to $7769.37. Bill of Costs attached to judgment.

The April 14th notation, having failed to indicate that the court action was a judgment, did not show its "nature" and, having failed to include the elements contained in the later notation, did not show its "substance". There was therefore no entry of judgment until May 24th.

ARGUMENT

Under the Federal Rules of Civil Procedure, the time for appeal begins to run from the entry of a judgment in the civil docket by the clerk. In contending that the appeal below was timely, it is our position that there was no entry of judgment on April 14, 1955, but rather that judgment was entered on May 24th, 1955. Our argument embraces two main propositions: first, that the opinion of the district judge in April did not constitute a "judgment," and second, that even if it did, the notation of the clerk at that time did not constitute an "entry" of a judgment. Under the Rules a judgment is not effective before such entry.

I

THE OPINION OF THE DISTRICT JUDGE ON APRIL 14TH WAS NOT A "JUDGMENT"

On April 14, 1955, the district judge issued a written opinion in this case on the merits. He quoted and relied upon the opinion of Judge Leibell in *United States* v. *National Sugar Refining Co.*, 113 F. Supp. 157 (S. D. N. Y.). The last sentence of the opinion was set off as a separate paragraph and read (R. 4):

> I am in agreement with Judge Leibell's analysis and, accordingly, the plaintiff's motion is granted.

The first sentence of the opinion, two pages earlier, had stated that the plaintiff had moved for summary judgment. The Court of Appeals has held that this opinion of the district court constituted its "judgment" within the meaning of the Federal Rules of

CITATIONS

Cases:

Civil Procedure? We respectfully submit that it did not.

A. THE HISTORY AND CONSTRUCTION OF THE FEDERAL RULES OF CIVIL PROCEDURE SHOW THAT A JUDGMENT WAS CONSIDERED A SEPARATE ACT OF THE COURT FOLLOWING A DECISION

Rule 73 of the Federal Rules of Civil Procedure, *supra*, p. 3, provides that, in cases in which the United States is a party, the time for taking an appeal from a decision of a district court shall be 60 days "from the entry of the judgment appealed from". Aside from this Rule which sets the time limit, there are three Rules with which we are particularly concerned. The first of these is Rule 54 (a), *supra*, p. 2, which gives the only definition of "judgment" in the Rules. The second, and more important, is Rule 58, *supra*, pp. 2–3, which contains the basic provisions as to when a judgment shall be entered. The third is Rule 79, *supra*, pp. 3–5, providing what records of a judgment shall be made by the clerk. These three rules may be considered as providing *what* is a judgment, *when* it shall be entered, and *what* shall be entered. Obviously there is a close interrelationship among the rules; each sheds light on the others.

1. Rule 54 (a) indicates that the judgment is something separate which contains certain elements

The only definition of "judgment" contained in the Rules is that appearing in Rule 54, entitled "Judgments; Costs," the first paragraph of which reads as follows:

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* "* * * these rules contemplate some decisive and complete act of adjudication by the district judge; when this is done, and notation thereof made in the civil docket, the judgment is complete * * *" (R. 12).

Cases—Continued

(a) definition; form.

"Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

Rule 54 (a) supports the proposition that a judgment is a matter of form as well as a matter of substance.

Because of the union of law and equity carried out in the rules, it was considered advisable by the Advisory Committee on Rules for Civil Procedure to have the one term "judgment" include the former "judgment" at law and "decree" in equity. The second sentence of Rule 54 (a) was originally included in Rule 63 of the Preliminary Draft of the Rules of May 1936, and was entitled "Form of Judgments." The Committee's notes state that this provision "is substantially taken from Equity Rule 71 (Form of Decree)."

Rule 71 of the Federal Equity Rules, adopted on November 4, 1912, and Form No. 25 of the Forms of Practice issued under the Equity Rules, contemplated that an effective decree would be embodied in a formal document. Rule 71 was as follows:

> In drawing up decrees and orders, neither the bill, nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: "This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon,

Cases—Continued

Statutes—Continued

upon consideration thereof, it was ordered, adjudged and decreed as follows, viz." (Here insert the decree or order.)[1]

The decisions which interpreted Equity Rule 71 distinguish between the court's decree and its findings of fact and conclusions of law, and held that the findings and conclusions did not constitute the decree. *Larkin Packer Co.* v. *Hinderliter Tool Co.*, 60 F. 2d 491, 494–495 (C. A. 10); *Lewis* v. *Ingram*, 57 F. 2d 463, 466 (C. A. 10); *Elliott Addressing Mach. Co.* v. *Addressing Typewriter Stencil Corp.*, 31 F. 2d 282 (C. A. 2); *United States* v. *Goldstein*, 271 Fed. 838, 844–845 (C. A. 8); *Linde Air Products Co.* v. *Morse Dry Dock & Repair Co.*, 246 Fed. 834, 836 (C. A. 2).[2]

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[1] Initially, the Equity Rules, promulgated February Term, 1822, did not provide for a form of decree, but Rule XXXIII prescribed as follows:

> In all cases where the rules prescribed by this court, or by the Circuit Court, do not apply, the practice of the Circuit Courts shall be regulated by the practice of the High Court of Chancery in England.

On March 2, 1842, provisions relating to the form of the decree and similar to these later contained in Equity Rule 71, were first promulgated in Equity Rule LXXXVI. These provisions were continued in Rule 86 of the Equity Rules, 1866–1911, and in Equity Rule 71.

[2] Cf. *Putnam* v. *Day*, 22 Wall. 60, 67, and *M'Claskey* v. *Barr*, 48 Fed. 130, 131 (C. C. S. D. Ohio), in which it was held that the Equity Rules, before Equity Rule 70½ was promulgated providing for the separate statement of findings of fact and conclusions of law, did not prohibit the recital of facts and law in the decree. In *Putnam* v. *Day*, *supra*, this Court stated as follows (p. 67):

> The eighty-sixth rule in equity, adopted by this court, has abolished the recital of the pleadings and proceedings in the decree, and has prescribed the form in which it shall be couched, as follows: "This cause came on to be heard

Miscellaneous—Continued

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OPINIONS BELOW

The opinion of the Court of Appeals (R. 8–16) is reported at 236 F. 2d 889. The opinion of the District Court (R. 2–4) is reported at 130 F. Supp. 322.

JURISDICTION

The judgment of the Court of Appeals was entered on September 12, 1956. (R. 17.) On November 30, 1956, the time within which to file a petition for a writ of certiorari was extended, by an order of Mr. Justice Harlan, to February 9, 1957. The petition for a writ of certiorari was filed on February 8, 1957, and was granted on March 25, 1957. (R. 18.) The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254 (1).

QUESTION PRESENTED

Whether, under the Federal Rules of Civil Procedure, the time for appeal runs from the date of an opinion (and docket entry) indicating that the case has been decided, or from the date of signature by the judge (and corresponding docket entry) of a formal judgment indicating the successful party and the amount of the judgment.

RULES INVOLVED

Federal Rules of Civil Procedure:

Rule 54. JUDGMENTS; COSTS.

(a) *Definition; Form.* "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

* * * * *

Rule 58 [As amended December 27, 1946].
ENTRY OF JUDGMENT.

Unless the court otherwise directs and subject to the provisions of Rule 54 (b), judgment upon the verdict of a jury shall be entered forthwith by the clerk; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49. When the court directs that a party recover only money or costs or that all relief be denied, the clerk shall enter judgment forthwith upon receipt by him of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the

form of the judgment and direct that it be entered by the clerk. The notation of a judgment in the civil docket as provided by Rule 79 (a) constitutes the entry of the judgment; and the judgment is not effective before such entry. The entry of the judgment shall not be delayed for the taxing of costs.

Rule 73 [As amended December 27, 1946, and December 29, 1948]. APPEAL TO A COURT OF APPEALS.

(a) *When and How Taken.* When an appeal is permitted by law from a district court to a court of appeals the time within which an appeal may be taken shall be 30 days from the entry of the judgment appealed from unless a shorter time is provided by law, except that in any action in which the United States or an officer or agency thereof is a party the time as to all parties shall be 60 days from such entry, and except that upon a showing of excusable neglect based on a failure of a party to learn of the entry of the judgment the district court in any action may extend the time for appeal not exceeding 30 days from the expiration of the original time herein prescribed. * * *

A party may appeal from a judgment by filing with the district court a notice of appeal. * * *

* * * * *

Rule 79 [As amended December 27, 1946, and December 29, 1948]. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

(a) *Civil Docket.* The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the Director of

The second sentence of Rule 54 (a), which states that a judgment "shall not contain" three particular items, certainly implies that there are some elements which a judgment *shall* contain. The very heading of the Rule, "Definition; Form," suggests that a judgment must have some form. Under the equity procedure there was a form prescribed by the rules. The Advisory Committee, as indicated in its notes, intended to carry this provision forward in substance. The requirements as to form were made more flexible, but under Rule 54 (a) a judgment remains a separate judicial act which contains certain elements and has a form and identity of its own.

2. Rule 58 contemplates that the judgment be a direction of the court, not merely a decision

Rule 58, *supra*, pp. 2–3, by providing *when* a judgment shall be entered, sheds substantial light on what the Rules consider to be a judgment. Judgment upon the verdict of a jury is to be entered forthwith unless the court otherwise directs. Here the act is ministerial and the Rule provides that the clerk shall act for the court in entering judgment unless told not to. (There are two other instances in which the clerk is similarly authorized: Rule 55 (b) (1), judgment by default for a fixed amount, and Rule 68, where an

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at this term, and was argued by counsel; and thereupon, in consideration thereof, it was ordered, adjudged, and decreed, as follows, viz:" here inserting the decree or order. The decree, it is true, may proceed to state conclusions of fact as well as of law, and often does so for the purpose of rendering the judgment of the court more clear and specific.

the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be noted chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order or judgment shall show the date the notation is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

* * * * *

(b) *Civil Judgments and Orders.* The clerk shall keep, in such form and manner as the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States may prescribe, a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

offer of consent judgment has been accepted.) Otherwise, there is to be no entry of judgment until there has been a "direction" of the court.

The second sentence of Rule 58, as originally adopted in 1938, read:

> When the court directs the entry of a judgment that a party recover only money or costs or that there be no recovery, the clerk shall enter judgment forthwith upon receipt by him of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk.

When the 1946 amendments were adopted, the quoted sentence was changed as follows, the stricken words being omitted and the italicized words being added:

> When the court directs ~~the entry of a judgment~~ that a party recover only money or costs or that ~~there be no recovery~~ *all relief be denied,* the clerk shall enter judgment forthwith upon receipt by him of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk.

In addition, a new sentence was added at the end of the rule, reading:

> The entry of the judgment shall not be delayed for the taxing of costs.

In its note explaining these amendments the Advisory Committee refers only to "*Two* changes * * * made in Rule 58 in order to clarify the practice"

(c) *Indices; Calendars.* Suitable indices of the civil docket and of every civil judgment and order referred to in subdivision (b) of this rule shall be kept by the clerk under the direction of the court. * * *

* * * * * *

STATEMENT

The facts are not in dispute and may be summarized as follows:

Taxpayer sued to recover the amount of documentary stamp taxes which it alleged the Government had illegally assessed and collected, and in its complaint demanded judgment against defendant in the sum of $7,189.57, interest and costs. Upon joinder of issue, taxpayer moved for summary judgment. (R. 7.) On April 14, 1955, the District Judge rendered an opinion which quoted and relied upon Judge Leibell's opinion in *United States* v. *National Sugar Refining Co.*, 113 F. Supp. 157 (S. D. N. Y.), and concluded with the statement (R. 4) "I am in agreement with Judge Leibell's analysis and, accordingly, the plaintiff's motion is granted." On the same day the clerk made the following docket entry (R. 2):

> April 14 Rayfiel, *J.* Decision rendered on motion for summary judgment. Motion granted. See opinion on file.

On May 24, 1955, the District Judge signed a paper, submitted by taxpayer, captioned "Judgment" which recited that, taxpayer having moved for summary judgment, the motion having come on to be heard on February 23, 1955, and (R. 4–5) "after due considera-

(Report of Proposed Amendments to Rules of Civil Procedure for the District Courts (June 1946), p. 76). (Emphasis added.) The two changes are stated to be "The substitution of the more inclusive phrase 'all relief be denied' for the words 'there be no recovery'." and "The addition of the last sentence in the rule emphasizes that judgments are to be entered promptly by the clerk without waiting for the taxing of costs." Thus, the inference is plain that the Advisory Committee did not regard the omission of the words "the entry of a judgment" as a change of any substance. At the most, the change simply eliminated the necessity of the court's directing the clerk to enter the judgment, so long as the court had directed that a party recover money. One direction by the court was enough.

It is important to note that the Rule does not say that the clerk shall enter judgment once the court has *decided* that a party shall recover money damages. Judgment is not to be entered until the court has *directed* the recovery. The Rule maintains the distinction between a decision of a court and an order of a court.

There are thus three categories of occasions on which judgment may be entered. On a general verdict of a jury the clerk may enter judgment for the court without further action by the judge. Where simple money damages are involved, the clerk may enter judgment once the court has *directed* that a party recover a specified amount. Where more complicated relief is involved, judgment may not be entered until the court has approved the form of judgment and di-

tion the plaintiff's motion for summary judgment having been granted on April 14, 1955, and the Court's opinion having been duly filed herein," provided as follows:

> IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff, the F. & M. Schaefer Brewing Co., recover of the defendant, United States of America, the sum of $7,189.57 and interest thereon from February 19, 1954 in the amount of $542.80, together with costs as taxed by the Clerk of the Court in the sum of $37, aggregating the sum of $7,769.37, and that plaintiff have judgment against defendant therefor.

This document was stamped: "Judgment Rendered: Dated: May 24th, 1955. Percy G. B. Gilkes, Clerk." (R. 5.) On that day the clerk made the following entry in his docket (R. 2):

> May 24 Rayfiel, *J.* Judgment filed and docketed against defendant in the sum of $7,189.57 with interest of $542.80 together with costs $37 amounting in all to $7,769.37. Bill of Costs attached to judgment.

The Government filed its notice of appeal on July 21, 1955 (R. 5), which was ninety-eight days from the original grant of the motion and fifty-eight days from the filing of the judgment signed by the judge. Taxpayer moved the Court of Appeals to dismiss the appeal as not timely brought. (R. 6.) The Court of Appeals, upon consideration by the full court *en banc*, granted the motion and dismissed the appeal. (R. 17.)

rected its entry. We are here concerned with a case of money damages. Since judgment cannot be entered until the court has directed that a party recover, it would appear that under Rule 58 such a direction is the judgment of the court.

The Report of Proposed Amendments to Rules of Civil Procedure for the District Courts (October 1955) supports the view that the judgment of the court is a separate judicial act following the decision of the court. The Report contained a suggested form of judgment to be used by clerks when the court directs recovery of only money or costs or that all relief be denied (note, p. 69; Form 31, p. 70). Further, the Report proposed an amendment to Rule 58, considered as declaratory of existing law, which would have inserted the following between the present second and third sentences:

> If an opinion or memorandum is filed, it will be sufficient if a *specific direction* as to the judgment to be entered is included therein or appended thereto; and any such direction either for an immediate or for a delayed entry of judgment is controlling and shall be followed by the clerk. [Emphasis added.] [3]

The Committee thus understood that under Rule 58 there was no judgment until the court had made a specific direction.

[3] The Advisory Committee's explanatory note states (p. 60) that the amendment—

> should set to rest the doubts noted in Comm., *Entry of Judgment*, 18 Fed. Rules Serv. 927, due to certain cases there cited—and see also 3 *Barron & Holtzoff, Fed. Prac. & Proc.* § 1283, p. 220 (1950)—as to the effect of the court's direction as an entry of judgment.

SUMMARY OF ARGUMENT

I

The appeal from the district court to the court of appeals was in time because taken within 60 days of the formal entry of judgment on May 24, 1955. The opinion of the district judge on April 14th did not constitute the "judgment" of the court.

A. The relevant rules of the Federal Rules of Civil Procedure indicate that a judgment is a distinct and separate act of a court following a decision. Rule 54 (a) is derived from the old equity rules which provided a special form for a decree. And in stating that a judgment "shall not contain a recital of pleadings" etc., Rule 54 (a) clearly implies that there shall be an identifiable order of the court called a judgment which shall contain at least some minimal elements.

Rule 58 provides that the clerk shall enter judgment for a money amount after "the court directs that a party recover only money or costs * * *." The clerk is not to enter judgment following a *decision* by the court but only following a *direction* that a party recover a money amount. We believe that this rule maintains the basic distinction between an opinion of a court and an order of a court, and it is only the order of the court—a direction by the court—that constitutes a judgment.

Rule 79 supports the view that a judgment is a separate order of the court complete in itself and distinct from the opinion. Under Rule 79 (a) the clerk must enter the "substance" of a judgment in the civil docket. For this to be possible there must exist a judgment which is more than a phrase—a judgment

3. Rule 79 supports the view that a judgment is a separate, tangible order of the court complete in itself and distinct from an opinion

Rule 79 (b), *supra*, p. 4, requires the clerk to keep "a correct copy of every final judgment" affecting a lien upon real or personal property. This plainly suggests that a judgment is a separate document setting forth the order of the court. The clerk could hardly keep a "correct copy" of a judgment unless there existed language embodying the court order. A copy of the judgment would serve little purpose if it merely said "the plaintiff's motion is granted." And it is clear that the clerk is not expected to file a copy of the opinion as the judgment. Rule 79 provides further demonstration that under the Federal Rules of Civil Procedure a judgment is not merely the decision of the court but a separate and distinct order of the court sufficiently complete that a copy of it is meaningful in itself.

B. THE MOST SATISFACTORY METHOD OF RENDERING JUDGMENT IS FOR THE COURT TO SIGN A FORMAL DOCUMENT

1. Formal judgments have long been the general practice

As the Court well knows, the usual judicial practice following decision in a case is for the court to render judgment in formal terms. Typically, this is done by having a judge sign a document headed "Judgment", which briefly recites that the case has been heard or submitted and then contains the operative language of the court's order. The document signed by the district judge below on May 24, 1955 (R. 4–5) is illustrative. The formal judgment contains the basic elements of the court's order. It contains the com-

which has substance. Similarly, Rule 79 (b) requires the clerk to keep "a correct copy of every final judgment" affecting a lien on real or personal property. This plainly suggests that a judgment is a separate and distinct document embodying the order of the court.

B. The most satisfactory method of rendering judgment is for the court to issue a formal document clearly identified as the judgment of the court. This has long been the general practice. It is the practice followed by this Court and by all of the courts of appeals. The Second Circuit itself, following this Court's decision in *Commissioner* v. *Estate of Bedford*, 325 U. S. 283, issues a formal judgment separate and distinct from its opinion. In this very case, following an opinion at least as explicit as that of the district court, the court of appeals rendered formal judgment.

Wherever, as here, a formal judgment has been signed, that document should, at least presumptively, be taken as the judgment of the court. The court below has apparently adopted a reverse presumption to the effect that an informal decision by a court will be taken as the judgment unless the court affirmatively indicates to the contrary. In *United States* v. *Hark*, 320 U. S. 531, 534–535, this Court said:

> Where, as here, a formal judgment is signed by the judge, this is *prima facie* the decision or judgment rather than a statement in an opinion or a docket entry.

This rule has been followed by most of the courts of appeals. We believe that it is the correct rule and should be applied here.

mand or direction of the court: "It is ordered, adjudged and decreed that * * *." It contains the names of the parties; and it states who shall pay how much to whom.

The practice of having an independent document labeled "Judgment" is the one followed by this Court. No matter how explicit the opinion, a separate form is promptly typed up embodying the judgment of the Court, usually initialled by the Justice who announced the judgment and opinion of the Court, and filed. It is certified copies of this original judgment that are sent to the court or parties concerned. See Revised Rules of the Supreme Court, Rule 59 (3).

The Rules of this Court assume that the opinions and judgments of other courts will be embodied in separate documents. Rule 23 (i) provides that there shall be appended to a petition for certiorari a copy of any opinions delivered upon the rendering of the judgment sought to be reviewed. Rule 23 (j) provides that "there shall also be appended to the petition a copy of the judgment or decree in question."

The Courts of Appeals, without exception we believe, now follow a similar procedure. Following a decision of the court a formal judgment is prepared, and signed or initialled by one of the judges. In apparently a majority of cases this is done on the same day as the opinion is issued. Sometimes, for example where there may be some difficulty in phrasing the judgment, it may be rendered a day or two later. On occasion, formal judgment may be rendered as much as a few weeks later.[4] But every Court of Ap-

[4] For example in *National Labor Relations Board* v. *Business Machine Conference Board*, 228 F. 2d 553, certiorari denied,

Practical considerations also favor the use of formal judgments. The use of such a judgment need not cause the delay feared by the Second Circuit. Delay stems not from the use of a formal judgment but from the practice of waiting for counsel to prepare the form, and imposing no limit on when it should be submitted. This can be easily avoided, or the clerk can prepare the form. On the other hand, failure to embody the judgment in a formal document causes confusion among the litigants and third parties interested in the judgment. The Second Circuit itself has had difficulty in applying its construction of the Rules, sometimes finding that the judge's language elsewhere in the record indicates an intent to do more, thus turning a categorical "complaint dismissed" into less than a judgment. The great variety of possible judicial expressions demonstrates the desirability of a sharp and clean-cut judgment. Recording and enforcement of liens and the execution of the judgment itself depend upon precision in terms and knowledge that a judgment has in fact been rendered.

C. Although we concede that it is possible under the present Rules to render judgment through means other than a formal document, to do so requires both judicial intent to render judgment and the use of appropriate language. A district judge can render judgment orally from the bench or can do so in an opinion, but he must manifest a clear intent that that is what he is doing. The language should be unequivocal. Since a decision and a judgment are two different judicial acts, it is not enough for a judge to say "the motion is granted". If he intends to render

peals, treats the rendering of judgment as a distinct judicial act from the decision or opinion in the case, no matter what language the opinion may use.

Illustrative is the action of the Second Circuit in this very case. The court found that the opinion of the district judge concluding " * * * the plaintiff's motion is granted" was a "complete act of adjudication" and that the judgment was complete without other formal documents. (R. 12.) The Court of Appeals' own opinion concluded (R. 16):

> Accordingly the appeal must be dismissed as not timely filed.
>
> Motion to dismiss granted; appeal dismissed.

Yet the Court of Appeals did not treat its own opinion, substantially more explicit than that of the district court, as a complete act of adjudication making other formal orders unnecessary. On the contrary, the court proceeded to render a formal judgment (R. 17) which stated that—

> * * * it is now hereby ordered, adjudged, and decreed that the appeal from the judgment of said District Court be and it hereby is dismissed.

In the district courts the practice of having a formal judgment in every case is not universal. However, in the district court for the District of Columbia, which has 17 judges and is one of the two busiest district courts in the country, it is the practice to have the judgment in every case embodied in a formal

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351 U. S. 962, the Second Circuit's opinion of December 22, 1955, concluded: "Enforcement of the Board's order is therefore in all respects denied." On January 12, 1956 the court entered a formal decree which provided that the Board's order "hereby is denied and set aside."

document. There, in the case of money judgments where there has been no jury, the almost universal rule is for counsel for the prevailing party to prepare the formal judgment which is then submitted to the judge for his signature. In a rare case, at the direction of the judge, the clerk may prepare the formal judgment for the judge to sign.

2. Where a formal judgment is signed there is a presumption that that is the judgment

We agree with the court below that if a district court has once rendered judgment it cannot, by a subsequent and more formal act, render judgment again and thus extend the time for appeal. But such a statement leaves open the question of whether the first action taken by the court was the rendering of a judgment. In deciding that question the conduct of the court, both in general and in the particular case, is highly relevant. Where the court first decides the case and then enters a formal judgment, the formal action will be taken as the judgment of the court, at least in the absence of some unusual circumstance.

This Court has twice considered the situation of a decision followed by a formal judgment, and each time has found that the formal action constituted the judgment of the court.[4a] *United States* v. *Hark*, 320 U. S. 531, involved the question of which constituted the judgment of a district court for the purpose of computing the time for appeal under the Criminal Appeals Act[5]—an opinion which ended "The motion

[4a] The Court did not reach the issue in *Hoiness* v. *United States*, 335 U. S. 279, 300.

[5] Act of May 9, 1942, c. 295, 56 Stat. 271, Section 1.

to quash is granted" or a subsequent formal order quashing the indictment. In holding that the formal order and not the court's earlier statement in its opinion was the judgment, this Court stated (pp. 534–535):

> Where, as here, a formal judgment is signed by the judge, this is *prima facie* the decision or judgment rather than a statement in an opinion or a docket entry. * * * The judge was conscious, as we are, that he was without power to extend the time for appeal. He entered a formal order of record. We are unwilling to assume that he deemed this an empty form or that he acted from a purpose indirectly to extend the appeal time, which he could not do overtly. In the absence of anything of record to lead to a contrary conclusion, we take the formal order of March 31 as in fact and in law the pronouncement of the court's judgment and as fixing the date from which the time for appeal ran.

In *Commissioner* v. *Estate of Bedford,* 325 U. S. 283, 286, in holding that an opinion of the Court of Appeals did not constitute its judgment, this Court pointed out that:

> It does not detract from the "Opinion" as an opinion that in its heading it gives as dates "Argued January 6, 1944. Decided August 8, 1944," and that it concludes with "The order of the Tax Court is reversed." The same or similar phrases are commonly employed in opinions of this Court without changing their character as opinions. Nor do like phrases in the opinions of the other circuit courts of appeals turn them into judgments, since in all

other circuits judgment orders are separately filed. In spite of its title, the "Order for Mandate" on its face fulfills the function of such a judgment order. It recites that "it is now hereby ordered, adjudged, and decreed that the order of said The Tax Court of the United States be and it hereby is reversed.

"It is further ordered that a Mandate issue to the said The Tax Court of the United States in accordance with this decree.

ALEXANDER M. BELL,
Clerk.
By A. DANIEL FUSARO,
Deputy Clerk."

This language plainly imports that this is the judgment and that it is then being rendered. * * *

In recent cases several Courts of Appeals have applied the principles thus laid down by this Court to determine whether an earlier statement by a district court or the later express judgment constituted the "judgment." The First Circuit in *United States* v. *Higginson*, 238 F. 2d 439, 442, held that the opinion of the district judge, which concluded "and accordingly, judgment must be entered for the plaintiffs", was not the judgment. Instead, the formal judgment, as submitted by the plaintiffs for the recovery from the defendant (as here, the United States) of a stated sum with interest, signed at a later date by the judge, was ruled to be the judgment. The First Circuit, relying on this Court's decision in *United States* v. *Hark*, 320 U. S. 531, and on its own prior decision in *In re Forstner Chain Corp.*, 177 F. 2d 572, stated that—

> the Federal Rules do not answer the question which confronts us. The terms "decree", "order" and "direction" have to be judicially defined if the rules are to be meaningful.
>
> * * * * *
>
> Since, in the *Forstner* case, the district judge had refused to grant a formal judgment, it was clear under the local practice that he did not have in contemplation any subsequent judicial act of pronouncing judgment in a more formal manner. But in the instant case, it can be gathered from the language of the formal judgment of February 23, 1956, and from the fact of its rendition and entry that neither the district judge nor the clerk regarded the reference in the opinion nor the first entry as a judgment or entry of judgment. In the judgment of February 23, which the district judge signed, reference is made to the court having on January 6, rendered and filed not a judgment, but "an opinion." [238 F. 2d at 442]

The *Higginson* case, which was decided after the instant case, possesses particular significance since both the Second Circuit and the First Circuit recognized that the *Higginson* decision was in conflict with the decision below.[6] We submit that the *Higginson* case applies the correct rule.

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[6] In the opinion below the court stated that the purpose of Rule 58 was "also advanced" (R. 12) by a local rule, reading—

> A memorandum of the determination of a motion, signed by the judge, shall constitute the order; but nothing herein contained shall prevent the court from making an order, either originally or on an application for resettlement, in more extended form.

In *Higginson* the First Circuit, noting the absence of any similar local rule, declared (238 F. 2d at 443): "To the extent

In *Cedar Creek Oil and Gas Co.* v. *Fidelity Gas Co.*, 238 F. 2d 298, the Ninth Circuit also held that, for purposes of computing time for appeal, the formal judgment signed by the judge must be considered as the judgment. In that case the trial judge had issued an opinion, together with findings of fact and conclusions of law which stated that defendant was entitled to prevail and which concluded, "Judgment is hereby Ordered to be entered accordingly." (238 F. 2d at 299.) The clerk's notation recited, among other things, that there had been filed "order for judgment in favor of defendants * * *." The Court of Appeals nevertheless held that the time for appeal started to run later when the formal judgment was signed and entered, and commented (p. 301):

> Under such circumstances it should be permissible to look at what the judge and clerk did later. * * * It should not be presumed or assumed they had an intent to do a useless act. If the first acts are ambiguous, we think the later acts afford circumstantial evidence of the intent in the first acts.

See also *Randall Foundation, Inc.* v. *Riddell* (C. A. 9), decided January 18, 1957 (1957 C. C. H., par. 9352), and *Reynolds* v. *Wade*, 241 F. 2d 208 (C. A. 9).

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that the language of the *Schaefer* opinion might apply even where no such local rule exists, this decision is not in accord with it." Finally, the issue between the two circuits was sharply defined when the Second Circuit in *Matteson* v. *United States*, 240 F. 2d 517, 518, commenting upon the *Higginson* case, explained that "we viewed the local rule as merely corroborative of the practice actually required by F. R. 58" and stated that "Judge Hartigan's opinion must be taken as disapproving our reasoning."

The Fourth Circuit also regards the signing of a formal judgment as being inconsistent with a conclusion that a prior announcement of adjudication was the judgment. In *Papanikolaou* v. *Atlantic Freighters,* 232 F. 2d 663, a memorandum opinion signed and filed by the district judge which stated that the suit was dismissed was held not to be the judgment in view of the fact that the district judge had later signed a "final order" decreeing that the suit be dismissed. Pointing to the fact that "the judge deemed it necessary or desirable to file a formal judgment of dismissal" (232 F. 2d at 665), the court concluded that the parties "were justified in regarding this as the final judgment disposing of the case."

In accordance with the decisions of this Court in *Hark* and *Estate of Bedford,* and the other authorities cited, it is submitted that where, as here, a formal judgment has been rendered that action should be taken as the judgment of the court—at least in the absence of some exceptional circumstance. There is no suggestion of unusual circumstance in this case.

3. Practical considerations favor a formal judgment

The court below suggests that the Rules should be so construed that the opinion of the district judge constituted the judgment of the court in order to avoid "purely useless delays" (R. 14). The court considered the practice which it sanctioned as "a wise and practicable principle materially aiding in the expeditious determination of civil cases" (R. 16). We agree that the Rules must be construed in the light

of such practical considerations but believe that the practice of rendering formal judgments need cause no delay and greatly serves the interests of notice, certainty, and orderly judicial procedure.

As the practice of this Court and the courts of appeals throughout the country demonstrates, there need be no delay between the decision of a case and the rendering of a formal judgment. Formal judgment, particularly in a case involving a known money amount, may be entered on the same day as that on which the case is decided. Such delay as the Second Circuit criticizes comes not from the practice of rendering a formal judgment but rather from the practice of postponing that action until the successful party, at his convenience, presents a judgment to be signed by the judge. There is no necessity for that procedure. If counsel is to prepare the form of judgment he could be required to do so in one or two day's time. Perhaps more simply, as in this Court and the Court of Appeals for the District of Columbia Circuit, the clerk could automatically prepare a formal judgment as soon as the court has decided the case. Such a "judgment will then be signed or initialed by the judge or issued in the name of the court under the attestation of the clerk (whatever is the local practice), and not until then will the clerk make the entry of the judgment in the civil docket in accordance with Rule 79 (a)." *In re Forstner Chain Corp.*, 177 F. 2d 572, 577 (C. A. 1). Through the supervisory powers of this Court and through the Administrative Office of the United States Courts it should be possible to have the dis-

trict courts uniformly and promptly render a formal judgment in each case. The requirement that there be formality to court action is not a requirement that there be "purely useless delays".

Strong practical considerations dictate the desirability of a formal judgment, preferably a document labeled "judgment" and embodying the order of the court. A judgment is an order of the court—a command similar to those for which one may be held in contempt. Whether or not a court has issued a command should not be left in doubt; it should not be left subject to the interpretation of the conclusory language of each oral or written opinion. To appreciate the extent of the practical problem presented by the Second Circuit's interpretation of what constitutes a judgment one must understand the test as that court applies it.

In *Matteson* v. *United States*, 240 F. 2d 517, 518 (C. A. 2),[7] the court stated that "the issue always turns on the trial judge's declared intent as to the judgment" and that "where he has not made that clear, some interpretation is necessary." The court went on to say "we do not think the trial judge's original statement is subject to reassessment and definition" on the basis of having later signed a formal judgment. But consider the application of this rule in a group of cases reported as *Edwards* v. *Doctors Hospital*, 212 F. 2d 888 (C. A. 2).[7a] There, with re-

[7] Without urging the correctness of, but because of, the decision in *Schaefer*, the Government raised the jurisdictional question before the Second Circuit in *Matteson*.

[7a] The single case, *Edwards* v. *Doctors Hospital*, is now pending on petition for certiorari, No. 219, this Term.

spect to some of the cases before it, the court said (242 F. 2d at 891):

> In these consolidated cases Judge Galston filed an opinion on March 28, 1956, 140 F. Supp. 909, which would have been an unequivocal and definite determination of all the issues in favor of defendant, dismissing the complaint, except for the fact that he added "Settle orders."
>
> * * * * *
>
> The ruling in *F. & M. Schaefer Brewing Co.* v. *United States, supra,* followed by *Matteson* v. *United States*, 2 Cir., 240 F. 2d 517 is (236 F. 2d at page 891) that, to start the time to appeal running, there must be "some decisive and complete act of adjudication by the district judge * * * and notation thereof made in the civil docket." Here there was no such decisive act because of the words "Settle orders," at the end of the opinion. This well known formula has always indicated that something further is necessary, in the opinion of the trial judge, before his decision becomes definitive.

Significantly in the cited case the orders which were later settled amounted merely to the affixing by the district judge of his signature to a formal order dismissing each complaint with costs. Thus, had the district court here added at the end of his opinion "Settle order" or "judgment," this would have been regarded even by the court below as adequate to show lack of present intention to render a judgment.

In another one of the cases decided in that group the district judge, at the conclusion of the trial, had said: "I am going to dismiss the complaint." The

docket entry showed: "Complaint dismissed." It could well be thought that this was a judgment within the Second Circuit's interpretation. But that court looked to the opinion which the judge had dictated after stating that he was going to dismiss the complaint. Following some thirteen pages in the transcript the trial judge had said, "if you want to submit more formal requests and findings, I will be glad to receive them." Nothing was submitted. Five weeks later a formal judgment was entered dismissing the complaint, action which the Court of Appeals found to constitute the judgment in the case. Under this holding the whole transcript may have to be reviewed to discover whether or not a judgment has been entered. A judge might during the trial indicate that he would be willing to enter a formal judgment or findings for the successful party should it wish to submit them, and apparently such a manifestation of intent would control, even though the docket entry made no reference to such a statement.

There is an unlimited choice of conclusory words which may be used in a written or oral opinion or other judicial pronouncement. Many would appear to constitute a judgment within the eyes of the Second Circuit but are highly ambiguous as to whether the district court contemplates further action. A few examples may be given: "judgment will be for the plaintiff"; "the decision must be for the plaintiff"; "I am going to dismiss the complaint"; "I find for the defendant"; "the defendants are entitled to judgment". Frequently, even where the language may appear to be dispositive, there will be problems in-

herent in the case which will require further action by the court. In many instances, even though the legal issues have been adjudicated, extensive and complicated computations may have to be made. Occasionally, in tax cases and other cases involving offsetting amounts, the computation may be necessary before it is known who owes money to whom. Often, a decision as to whether or not to appeal cannot reasonably be made until the court files its findings of fact.

Among the great variety of judicial expressions which may or may not constitute a judgment under the Rules as interpreted by the ~~Supreme~~ Circuit, both the clerk and the parties must decide in each instance whether judgment has been rendered. The entry of judgment by the clerk is a ministerial function; but the effect of the decision below places upon him a duty to decide from something less than an express adjudication that final judgment is intended. Since the failure of the clerk to enter judgment is said (R. 12, fn. 2) to be a "misprision" "not to be excused", the imposition of such a burden in circumstances so ambiguous seems not to represent the intent of the Rules. It also requires the clerk to exercise a discretion which under the Rules should be exercised by the judge.

But the clerk's interpretation of the judge's intent provides no protection to counsel. In this case it is obvious from the docket entries that the clerk understood that no judgment had been rendered until the formal judgment was signed. Yet the Court of Appeals held that, despite the understanding of everybody involved—the district judge, who signed the

formal judgment, the clerk who stamped it "Judgment Rendered", the plaintiff who prepared and submitted it, and the defendant, who computed appeal time from it—judgment actually had been entered unwittingly by the clerk a month previously.

Under the Second Circuit rule the only cautious course for counsel is to file a notice of appeal following any indication of views by the district judge. The resulting premature[8] and duplicate appeals may be burdensome to the courts but they seem to be the only alternative to finding out later that an appeal has been filed too late. The United States now, in many cases, files two notices of appeal to make sure that one is timely. But the practical problem is by no means limited to the question of appeal time.

Other persons have an interest in a precise statement of the judgment and the notation of its entry apart from the litigants. Creditors of the party against whom a money judgment is entered are concerned both with the time when a judgment lien attaches and with the amount of the judgment.

28 U. S. C. (1952 ed.), Section 1962 provides:

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[8] See, *e. g.*, the unreported decision referred to in *Edwards* v. *Doctors Hospital*, 242 F. 2d 888, 891 (C. A. 2):

> Such was the holding in *United States* v. *Lucchese*, decided without opinion by this Court on October 8, 1956. In that case Judge Inch, 149 F. Supp. 952, indicated in his opinion that he would grant a motion for summary judgment dismissing the complaint, without prejudice to the institution of another proceeding; but his opinion ended with the words, "Settle order." This Court, in a panel consisting of Judges Clark, Hand and Swan, held that the appeal was prematurely taken and should be dismissed, as no order was ever settled. * * *

> Every judgment rendered by a district court within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such State, and shall cease to be a lien in the same manner and time. * * *

The statutes of most states also provide for the registration, recording, docketing and indexing of district court judgments in the same manner as for state court judgments. In some states a correct or certified copy of the judgment of the district court must be filed in the state office before a lien attaches. In other states an abstract of the district court's judgment may be filed, but in such instances the abstract must include prescribed information, such as the names, addresses and counsel for the prevailing party and the judgment debtor, the amount of the judgment, the date when the judgment was entered, etc.[9]

Precision in the judgment is also essential to its

[9] *E. g.*, 4 Arizona Revised Statutes Annotated (1956), c. 9; Deering's California Code of Civil Procedure (1953), Section 674; 6 Delaware Code Annotated (1953), Sections 4704, 4731 and 4736; 2 Burns Indiana Statutes Annotated (1946), Part 1, Sections 2–2517, 2–2520, 2–2710 and 2–3302; General Statutes of Kansas Annotated (1949), Sections 60–3122 and 60–3126; 25 Minnesota Statutes Annotated (1947), Sections 548.09 and 548.11; 2 Mississippi Code 1942 Annotated (Recompiled, 1957), Sections 1554, 1555 and 1557; 32 Vernon's Annotated Missouri Statutes (1952), Sections 511.350, 511.440, 511.450 and 511.500; 7 Revised Codes Montana (1947), Sections 93–5708, 93–5709, 93–5712 and 93–5714; 2 Revised Statutes Nebraska 1943, Sections 25–1303 and 25–1305; 4 Gilbert-Bliss New York Civil Practice Act Annotated (1943), Sections 500, 502, 502–a, 503, 504, 509 and 510.

enforcement by execution and other proceedings supplementary to judgment, since Rule 69 (a) prescribes that these shall be in accordance with the practice and procedure of the state in which a district court is held.[9a] Knowledge that there has been an adjudication of the case is hardly enough to enable a litigant to obtain a transcript of judgment which sets forth all the required information for recording elsewhere and for process in enforcement of the judgment. The court below suggests that "the precise details" can be located "when needed by the clerk to prepare a formalized judgment file" (R. 13). But a judgment is an operative order of the court which, in practical terms, is not an order until the basic details are collected together and stated in usable form. It is not an order until it is certain. The requirements of Rules 58 and 79 (a) that a judgment to be effective must be entered as such and its substance noted on the civil docket were surely means intended to promote the requisite certainty. It is submitted that the decision below reads this provision out of the Rules, with the untoward result which the present case illustrates.

C. ALTHOUGH A JUDGMENT NEED NOT BE FORMAL, THE RENDERING OF A JUDGEMENT REQUIRES JUDICIAL INTENT TO DO SO AND THE USE OF APPROPRIATE LANGUAGE.

Although arguing above (*supra*, pp. 20–35) that the best procedure is to have a formal document labeled "judgment" entered in each case, we do not contend that that is the only way in which a district

[9a] In a condemnation case the judgment is itself the title instrument and must be sufficiently precise to be recorded as such.

court can render judgment under the present Rules. We believe that that is the best way, that there is a presumption that that is the method in which judgment will be rendered, and that where there has been a formal judgment that should be taken as the judgment of the court (except in extraordinary cases). We further contend that less formal action by a court cannot constitute a judgment unless it is made unmistakably clear that it is intended to, and unless it contains the basic elements of a judgment.

1. A judicial expression is not a judgment unless the court manifests an intent that it be the judgment in the case

The court below agrees that the intention of the district judge is important. But it appears to hold that if the judge once indicates that he has arrived at a decision that indication constitutes, *ipso facto*, the judgment of the court unless he shows a contrary intent. As discussed above, we believe that there is a critical distinction between a decision and a direction or command of the court. A judgment is a judicial command. An expression of views by a court should not be considered a judgment unless the court clearly indicates that that is its intent.

The First Circuit gives a lucid discussion of the problem of intent in its opinion in *In re Forstner Chain Corp.*, 177 F. 2d 572, 576–577:

> As stated in *Commissioner of Internal Revenue* v. *Bedford's Estate*, 1945, 325 U. S. 283, 286, 65 S. Ct. 1157, 89 L. Ed. 1611: "A judgment 'is the act of the court', *Ex parte Morgan*, 114 U. S. 174, 175, 5 S. Ct. 825, 29 L. Ed. 135, even though a clerk does all of the ministerial acts, as here, in conformity with his court's standing instructions." A final judgment is

the concluding judicial act or pronouncement of the court disposing of the matter before it. But neither by statute nor by rule is there a requirement that judgment be pronounced in any particular way, or embodied in written form in a separate formal document entitled "Judgment". See *United States* v. *Hark*, 1944, 320 U. S. 531, 534, 64 S. Ct. 359, 88 L. Ed. 290. Whether such a judgment has been rendered depends primarily upon the intention of the court, as gathered from the record as a whole, illumined perhaps by local rule or practice. *Commissioner of Internal Revenue* v. *Bedford's Estate, supra.*

A judgment may be pronounced orally from the bench. Thus if the judge should say, "It is the judgment of the court that the complaint in this case be dismissed", that statement may be meant as the final judicial act, the rendition of judgment: and when the clerk, pursuant to ad hoc or standing instructions, later notes such judgment, or the substance of it, in the civil docket, the time for taking an appeal commences to run. An opinion is not itself a judgment, even though it contains conclusions of fact or of law, and foreshadows how the judge intends to dispose of the case. Not infrequently, however, there is tacked on at the end of an opinion a sentence in mandatory language such as: "The complaint is dismissed." In the understanding and practice of the particular court, this concluding sentence may be the final judgment, the concluding judicial act or pronouncement disposing of the case, to be entered by the clerk forthwith. But not necessarily so. See *Commissioner of Inter-*

> *nal Revenue* v. *Bedford's Estate, supra,* 325 U. S. at page 286, 65 S. Ct. at page 1158. If it is the practice of the court to pronounce judgment in a more formal manner, in a separate document entitled "'Judgment", then the concluding sentence at the end of the opinion amounts to no more than a direction to the clerk for the preparation of the final judgment on behalf of the court; the formal judgment will then be signed or initialed by the judge or issued in the name of the court under the attestation of the clerk (whatever is the local practice), and not until then will the clerk make the entry of the judgment in the civil docket in accordance with Rule 79 (a).

The courts of appeals have had a difficult time deducing the intent of a district judge from language appended to an opinion. We summarize in the Appendix, *infra,* p. 53, some of the many cases dealing with the problem. They illustrate the great variety of possible conclusory phrases and some difference of views as to what sort of language indicates an intent to render judgment. We suggest that a strict rule should be adopted. In view of the desirability of formal judgments, dubious and indefinite language announced from the bench or included in an opinion should not be considered as the judgment of the court. Where the judge's intent is unmistakable, then, of course, an oral announcement or a written opinion may be taken as the judgment of the court, but not otherwise. It is easy enough for the district judge to use some such phrase as "* * * and I hereby render judgment for the plaintiff against the defendant

in the sum of $500 plus costs." It is not enough that the judge say "motion granted" or indicate how he is deciding the case. Language of the court does not constitute a judicial judgment unless on its face it indicates that the court does not intend to follow the normal practice of rendering formal judgment but intends these very words to constitute the final order of the court.

It is submitted that the court below should have recognized that it was the intention of the district court not to make its judgment prior to its rendition in express form. The statement at the end of its opinion set forth the conclusion which the district court reached as a result of the reasoning contained in the opinion; it was a decision, not an order of the court. As pointed out above, neither did the clerk regard the decision rendered on the motion for summary judgment to be the judgment, since it was not until the formal judgment was signed that the clerk made an entry that judgment had been filed. The parties did not understand that judgment had been entered prior to May 24, 1955, for it was taxpayer who submitted the form of judgment and the Government computed its time to appeal from the entry of this professed judgment. Moreover, this document intrinsically indicates that the district court did not understand that prior proceedings had amounted to adjudication, for in its recitals they are described as the granting of a motion and the filing of an opinion. (R. 4.) And it should not be assumed that the district judge would have signed a formal judgment

if he had intended his opinion to be the judgment of the court.[10]

2. For a court's informal expression to be a judgment it must be a judicial command and be of sufficient precision to be carried out

The intent of a judge to render judgment, even where that intent may be clear, is not enough; judgment itself must be rendered. The court, either through the judge or through the clerk, must embody the various elements that make up a judgment into words and issue those words as the command of the court. Even if a judge intended to dispose of a case by saying "I am persuaded by the plaintiff's arguments", such a pronouncement from the bench would not be a judgment. Upon a review of the cases and practice in the federal courts we believe that there are certain minimal elements which must be included in a judicial pronouncement in order for it to be a judgment.

[10] Local rules indicate recognition of a practice of entering formal judgments. Thus, Rule 10 (a) of the General Rules of the United States District Courts for the Southern and Eastern Districts of New York permits the court to make an order on a motion either originally or on application for resettlement, in an extended form; Rule 12 treats of the form of orders, judgments and decrees; and Rule 13 provides for their submission and settlement. New York State procedure contemplates the rendition of judgments in precise form. 3 B Gilbert-Bliss, New York Civil Practice Act (1942), Sec. 440; 4 Gilbert-Bliss, New York Civil Practice Act (1943), secs. 472, 501, 608 and 612; 10A Gilbert-Bliss, New York Rules of Civil Practice (1955), Rule 70; 10B Gilbert-Bliss, New York Rules of Civil Practice (1955), Rules 185, 195, 196, 198, 201.

First, it must be expressed in operative language. Typical may be considered phrases that are used in the judgments of this Court: "It is now here ordered and adjudged by this Court that * * *"; "On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said ------ Court in this cause be, and the same is hereby * * *" Although such formality may not be necessary the words must connote a present command, not future action. Phrases which would meet this test might be: "It is ordered that * * *"; "It is adjudged that * * *"; "I hereby render judgment for * * *" Non-operative language such as "The plaintiff must prevail"; and "The defendant's motion will have to be granted" cannot, we submit, constitute the judgment of a court.

Not only must a judgment be a command of a court but it must be sufficiently specific so that it can be carried out. As we discuss below, *infra,* pp. 44–47, the notation of a judgment in the civil docket must contain the "substance" of a judgment. We believe that a judgment itself must also contain the substance of a judgment. In the typical case this would mean that the judgment must identify the party found to be entitled to relief and the relief which the court is thereby ordering. The "correct copy of every final judgment" which the clerk is required to keep under Rule 79 (b), *supra,* p. 4, should at least include the name of the plaintiff, the name of the defendant, the amount[11] of the judgment, and who is to pay it to whom. Without such minimal information it is of little use. And if the copy of the judgment must con-

[11] By specific provision in Rule 58 this need not include costs.

tain such information we submit that the judgment itself must also contain it, at the least.

It should be noted that we are concerned only with the situation in which, under Rule 58, "the court directs that a party recover only money or costs or that all relief be denied". We need not consider what special cases there may be, if any, in which a district court could enter a final judgment as to liability, leaving the amount for subsequent litigation. *Cf.* Rule 38 (c) of the Court of Claims. In view of its special nature any such order, we believe, would constitute "judgment for other relief" within the meaning of Rule 58. There is no problem of ambiguity in such cases for there "the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk."

In short, however it is rendered and whatever roles are played by the judge and by the clerk, there is no judgment of a court until there exists somewhere, either in a separate document or in the transcript, an identifiable collection of words which constitute a judicial command that something specific be done. The statement in the district judge's opinion that "the plaintiff's motion is granted" (R. 4) was not a court order that the United States pay to the F. & M. Schaefer Brewing Company $7,189.57 plus interest thereon from February 19, 1954 in the amount of $542.80 (R. 5). It may be that the judge's opinion was sufficiently dispositive of the case so that the clerk would have been justified in immediately preparing a judgment for the court directing that the plaintiff recover the specified money amount from the defendant.

But that was not done. The court, as a unit, issued no such direction until May 24, 1955 (R. 4–5). We submit that the opinion of the district judge on April 14th did not constitute a judgment within the meaning of the Federal Rules of Civil Procedure.

II

THERE WAS NO ENTRY OF JUDGMENT UNTIL MAY 24TH

Even if our argument in Point I were to be rejected and the Court were to find that the opinion of the district judge in April was the judgment of the court within the meaning of the Federal Rules, we believe that the appeal below was still timely. The time for appeal runs not from the date of the judgment but from the "entry of the judgment" which requires specified action by the clerk. We submit that there was no entry of judgment until May 24, 1955.

A. APPEAL TIME RUNS FROM THE ENTRY OF JUDGMENT WHICH REQUIRES A NOTATION OF THE NATURE AND SUBSTANCE OF THE JUDGMENT IN THE CIVIL DOCKET

Rule 73 (a) provides that an appeal from a district court to a court of appeals shall be taken within a specified number of days—

> from the entry of the judgment appealed from * * *

Under Rule 58:

> The notation of a judgment in the civil docket as provided by Rule 79 (a) constitutes the entry of the judgment; and the judgment is not effective before such entry. * * *

The entry of judgment is thus important not only for appeals but for fixing the time when judgment liens attach and execution and other process may issue.

Because of these factors, it is essential that the point in time when a judgment is entered and becomes effective should be made as definite and easily ascertainable as possible. Rule 79 (a) has provided for this certainty—by requiring the clerk to make an entry in the civil docket which shows the nature of every paper filed and the substance of the court's judgment.

Rule 79 (a) provides, in relevant part, as follows:

> All papers filed with the clerk, * * * shall be noted chronologically in the civil docket * * *. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. * * *

Rule 79 (a) thus imposes two requirements as to the notation of a judgment. First, the notation must show the *"nature"* of each paper filed or writ issued. Each paper must be identified by the clerk as to what it is. If a motion has been filed, it shall be identified as a motion; and if the judge has filed a paper the clerk shall show its nature in the civil docket. We believe this means, for example, that the clerk must show whether the document is in the nature of an "opinion" or of a "judgment".

Second, the notation in the civil docket must also show the *"substance"* of each judgment of the court. Thus, it would appear the requirement that the "substance" of a judgment or order be noted by the clerk

in the docket presupposes a more complete entry than for other papers or writs. In addition, Rule 79 (b) requires that the clerk keep a correct copy of every final judgment; but it is the notation of the "substance" of the judgment under Rule 79 (a) in the civil docket that is the prescribed condition precedent to its effectiveness.

The cases which have interpreted Rule 79 (a) hold that the "substance" of the judgment includes some statement that the entry is an entry of judgment, the prevailing or losing party must be identified, and the specific relief provided for by the judgment must be mentioned. These three elements are essential to give the notice which an entry of judgment is supposed to provide.

In *United States* v. *Cooke*, 215 F. 2d 528 (C. A. 9), a case involving a suit for refund of taxes and interest, the district court filed a decision which stated that judgment should enter for the plaintiff (215 F. 2d, at 530) "as prayed for in the complaint" and the docket entry read "Filing decision (McLaughlin—Favor Plaintiff)." The Ninth Circuit held that this notation, since it did not state the amounts to be recovered by the plaintiff, did not show the substance of the judgment and, accordingly, was not a judgment entry adequate to commence the appeal period. The opinion goes on to hold (215 F. 2d at 530): "We think that the bare statements of the names of the successful litigants without stating the amounts of their respective recoveries do not constitute a showing of the 'substance' of the judgments."

Similarly, in *United States* v. *Higginson*, 238 F. 2d

439, while the First Circuit found it unnecessary to reach the question whether the docket entry showed the substance of the judgment, it referred to the *Cooke* decision and concluded that the failure to include in the *Higginson* entry the amount to be recovered by the plaintiff was (238 F. 2d at 443) a "further indication that this notation in the docket was not to be an entry of final judgment." In *Brown* v. *United States*, 225 F. 2d 861, involving judgment entered upon a jury verdict, the Eighth Circuit held that an entry which showed that a trial had been by jury, verdicts had been returned, and listed the amounts of the verdicts, did not show the substance of the judgment because the entry failed to include the term "judgment" or some other expression which would clearly convey the thought that the case had terminated. See also *Reynolds* v. *Wade*, 241 F. 2d 208 (C. A. 9); *Kam Koon Wan* v. *E. E. Black, Ltd.*, 182 F. 2d 146 (C. A. 9); *St. Louis Amusement Co.* v. *Paramount Film Distr. Corp.*, 156 F. 2d 400 (C. A. 8); *Uhl* v. *Dalton*, 151 F. 2d 502 (C. A. 9); *Lucas* v. *Western Casualty & Surety Co.*, 176 F. 2d 506 (C. A. 10).

B. THE APRIL 14TH NOTATION DID NOT MEET THE REQUIREMENTS OF THE RULES EITHER ON THEIR FACE OR AS THEY SHOULD BE INTERPRETED IN THE LIGHT OF THE PRACTICAL CONSIDERATIONS THEY SERVE.

In the instant case the clerk's entry of April 14, 1955, was as follows (R. 2):

> Decision rendered on motion for summary judgment. Motion granted. See opinion on file.

This entry indicated no more than that a motion for summary judgment had been granted and that an opinion was on file. Neither this entry nor any prior entry (R. 1–2) indicated which party had filed the motion. This entry did not state in whose favor the motion was granted, that the court had rendered judgment, or the amount of the judgment. Under these circumstances, it is not surprising that neither the judge, the clerk, nor either of the parties considered the earlier entry to constitute the entry of judgment.[12]

On the other hand, the clerk's entry on May 24, 1955, of the judgment in express form, which is as follows (R. 2):

> Judgment filed and docketed against defendant in the sum of $7189.57 with interest of $542.80 together with costs $37 amounting in all to $7769.37. Bill of Costs attached to judgment.

clearly shows the substance of the district court's judgment as required by Rule 79 (a). It states that judgment had been filed and docketed, identifies the losing party and sets forth the relief provided for in the judgment.

The court below, conceding (R. 13) that the April 14 docket entry of the decision on the motion was "not self-contained in the sense that a casual and uninformed reader would know what adjudication

[12] The record reveals (R. 10) that the plaintiff subsequently prepared and submitted the judgment in express form.

had been made, or anything more than that a decision had been rendered granting the motion for summary judgment * * *," nevertheless concluded that the notation showed the substance of the judgment on the ground that "The face of the entry itself would tell them [the litigants] all they needed to know at once of the fate of the case and the necessity of appeal, while the material referred to in the entry would afford the precise details * * *."

In *United States* v. *Cooke,* 215 F. 2d 528 (C. A. 9), on the contrary, the court held that the fact that an examination of the pleadings would reveal the amount of the judgment to which the plaintiff is entitled, "does not give the *entries* the substance of those amounts", stating (215 F. 2d at 530):

> If the nature of the judgment entries is to be determined only after an examination of the issues presented by the parties' respective pleadings, there would be no necessity for Rule 79 (a) providing the entry must show the substance of the judgment.[13]

And in *Reynolds* v. *Wade,* 241 F. 2d 208, 210, the Ninth Circuit said:

> A docket entry that doesn't even say who won, surely cannot qualify.

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[13] The Ninth Circuit in *Cooke* distinguishes between judgement for plaintiff and judgment for defendant. In the latter instance a notation in the docket that the plaintiff was denied any relief might be sufficient to show the substance of the judgment. On the other hand, where judgment is for the plaintiff, the extent of the relief granted must be shown in the entry.

The construction afforded to Rule 79 (a) by the court below would drain all meaning from its requirement that the "nature" and "substance" of the judgment be noted in the civil docket. Certainly, it places no undue burden upon the clerk to require him to indicate that what is entered is a judgment, against whom, and for what specific amount of money.

The court below refers to "the people really involved, the litigants, their counsel, and, indeed, the clerk." This list omits the interest of third parties and the consequences of a judgment other than in fixing the time of appeal. As the Eighth Circuit has pointed out in *Brown* v. *United States*, 225 F. 2d 861, other persons may have an interest in the judgment and its entry apart from the question of appealability. The decision below, in holding that necessary information need not appear in the docket entry but may be gleaned from an examination of the entire file, would adversely affect these third parties. On the other hand, Rule 79 (a) apparently contemplates that one place be made available, the civil docket, where persons, other than litigants, who have important reasons for examining the docket book, can determine readily from its entries whether and when a judgment has been entered, its substance including the relief granted, without having to seek elsewhere.

Creditors of the party against whom a money judgment is entered are concerned both with the time when a judgment lien attaches and with the amount of the judgment. Under the decision below, where it is held that this necessary information need not be stated in

the judgment or its entry, it would have to be gleaned if possible from an examination of the entire file. As to third parties particularly, this would impose a large burden.

But even insofar as litigants are affected by the entry of the judgment, it is essential, because of its jurisdictional nature, and the serious consequences to the losing party, that the point in time from which the appeal period is measured should be made as definite and easily ascertainable as possible. If the clerk is not required to include the elements of the judgment in the docket entry as well as a definite statement that judgment has, indeed, been rendered, it would be difficult to determine safely when the time to appeal starts to run with the unfortunate practical consequences of premature and duplicate appeals discussed above, *supra*, p. 34.

We submit that, construing the Rules in the light of the practical consequences of a judgment, the notation of April 14th, which failed to indicate who won or how much, did not show the substance and nature of a judgment as required by Rule 79 (a), and that there was no entry of judgment until May 24th.

CONCLUSION

For the reasons given above, the judgment of the court below should be reversed and the case remanded with direction that the motion to dismiss the Gov-

ernment's appeal be denied and that the court below proceed to consider the appeal on the merits.

Respectfully submitted,

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APPENDIX

Brief Summary of Some Court of Appeals Cases Involving the Issue of Whether or When the District Court Had Rendered Judgment

In *Randall Foundation Inc.* v. *Riddell*, decided January 18, 1957 (C. A. 9), the language in the District Court's minute order:

> The judgment will be for the defendant. Counsel will prepare and submit Findings of Fact, Conclusions of Law, and Judgment under the Rules.

was held not to constitute the court's judgment on the ground it directed the subsequent entry of the appropriate judgment.

In *Cedar Creek Oil and Gas Co.*, 238 F. 2d 298 (C. A. 9) the conclusion of law of the District Court, that "Defendants are entitled to a judgment for costs and disbursements herein," and the sentence added to the District Court's findings of fact and conclusions of law, "Judgment is hereby ORDERED to be entered accordingly", were held not to constitute the court's judgment. The Court of Appeals held that these words "lack any conclusive indication of finality," and "a certain element of 'nowness'," but instead "slant forward."

In *Lucas* v. *Western Casualty & Surety Co.*, 176 F. 2d 506 (C. A. 10), the following entry was made by the clerk (p. 507):

> Enter record of trial before the Court. Counsel stipulate all facts. Judgment entered favor deft., T. M. Lucas, in sum of $383.50 for sums

> earned and denied as to unearned amounts. Counsel directed to exchange briefs, and further trial continued to November 15, 1948, 9:30 A. M.

The Tenth Circuit held (176 F. 2d at 508) that the entry did not specifically direct that Lucas recover money or costs, and furthermore, the entry recited that counsel was to file a brief and the trial was continued to a later date. Consequently, the Court of Appeals held that the District Court did not "intend a final disposition" when the first entry was made.

In *Scott* v. *Gearner,* 197 F. 2d 93 (C. A. 5), the District Court, after taking testimony, and making certain findings and conclusions, stated: "I will ask you to prepare the decree, Gentlemen, to be okayed by the other side, as to form, saving such exceptions as they may wish." The clerk's entry was: "Entering judgment for plaintiff; collector enjoined; foreclosure as to Marvin Lunsford's interest granted." The Fifth Circuit held (197 F. 2d at 96) that the District Court's opinion was not its judgment, since the opinion directed counsel to prepare the decree and provided for exceptions.

In *In re D'Arcy,* 142 F. 2d 313 (C. A. 3), the referee in bankruptcy issued an order granting the bankrupt his discharge. The district court confirmed the order, and issued a memorandum which ended with "The order of discharge is affirmed." The memorandum was not signed by the judge but was entered by the clerk as "Memorandum (Smith)." The Third Circuit held that the district court's statement in its opinion, even though couched in mandatory terms, might serve as its judgment. The Court of Appeals pointed out, however, that the mandatory language of the opinion was never entered in the docket. Thus,

even if this language might constitute a clear direction, the Court of Appeals stated that this language was never entered and, accordingly, the entry of the opinion was not an effective entry of judgment under Rules 58 and 79 (a).

In the following cases the various Courts of Appeals also held that language appended to the district court's opinion or order was not sufficiently definitive to constitute the district court's judgment.

In *St. Louis Amusement Co.* v. *Paramount Film Distr. Corp.*, 156 F. 2d 400 (C. A. 8), a document filed by the district court, which was entitled (156 F. 2d at 401) "Opinion and Order Sustaining Motions of Defendants to Dismiss and for Summary Judgment" and which concludes by stating that "The motions of defendants to dismiss and for summary judgments are sustained", was held not to constitute the court's judgment. In *Monarch Brewing Co.* v. *George J. Meyer Mfg. Co.*, 130 F. 2d 582 (C. A. 9), an order of the district court granting defendant's motion for summary judgment was held to be merely an announcement that the district court intended to enter judgment, and was not intended to be the rendition of the judgment. Similarly, in *Wright* v. *Gibson*, 128 F. 2d 865 (C. A. 9), an opinion which concluded with the statement (128 F. 2d at 866) "The motion * * * is granted" was held not to constitute the court's judgment. *Uhl* v. *Dalton*, 151 F. 2d 502 (C. A. 9), held that an opinion which did not find the facts and state conclusions of law and declared that neither party was entitled to a judgment, was not a direction to enter judgment.

In *Kam Koon Wan* v. *E. E. Black, Limited*, 182 F. 2d 146 (C. A. 9), two "so-called" judgments which did not adjudicate all the claims invoked, were held not to contain the necessary determination and direction to have a judgment entered. *Weldon* v. *United*

States, 196 F. 2d 874, 875–876 (C. A. 9), held that a "so-called minute order—an unsigned typewritten paper filed with the clerk of the District Court * * *" purporting to deny petitions for suppression of evidence and return of seized property, and which was not entered, was not an effective judgment. *Lucas* v. *Western Casualty & Surety Co.,* 176 F. 2d 506 (C. A. 10), held that a direction by the district court that judgment was entered in favor of the defendant and counsel was directed to exchange briefs and further trial continued did not constitute a direction to enter judgment forthwith. In *Kanatser* v. *Chrysler Corp.,* 199 F. 2d 610, 622 (C. A. 10), the trial judge filed a memorandum of its views indicating what its judgment would be. This was held not to constitute the court's final judgment until it was formally entered by the clerk at the court's direction. Instead, the Tenth Circuit held that the entry of the formal judgment on the verdict of the jury was the effective entry of judgment. In *Fleming* v. *Van Der Loo,* 160 F. 2d 905 (C. A. D. C.), a memorandum opinion of the district court which stated, *inter alia,* "Damages denied. Petition for injunction granted", but did not contain any provisions with respect to the claim for damages, was not an effective judgment. See also *Healy* v. *Pennsylvania R. Co.,* 181 F. 2d 934 (C. A. 3); *Fast, Inc.* v. *Shaner,* 181 F. 2d 937 (C. A. 3); *Alameda* v. *Paraffine Companies,* 169 F. 2d 408 (C. A. 9); Commentary, Entry of Judgment, 18 Fed. Rules' Service 927.

On the other hand, in the following cases the Courts of Appeals held that the various statements appended to the district courts' opinions or orders were sufficiently definitive to constitute the courts' judgments. In *Sosa* v. *Royal Bank of Canada,* 134 F. 2d 955 (C. A. 1), an order which dismissed the complaint, awarded costs and directed the issuance of execution therefor

was held to constitute the judgment. Similarly, in *In re Forstner Chain Corp.*, 177 F. 2d 572, the First Circuit held that where the district court filed an opinion which held that a claim on a patent was invalid and which concluded with (177 F. 2d at 574) "Judgment may be entered for the defendant for costs", and where a separate formal document labeled "Judgment" or "Final Decree" was never filed, the opinion constituted the district court's judgment. *Bowles* v. *Rice*, 152 F. 2d 543, 544 (C. A. 6), held that a "formal signed order which recites, 'It is ordered that the restraining order heretofore entered be dissolved and the motion for temporary injunction be denied' " was "an unequivocal denial of the prayer for temporary injunction, and from it an appeal could have been taken." In *Steccone* v. *Morse-Starrett Products Co.*, 191 F. 2d 197 (C. A. 9), an order of the district court denying a motion to quash a writ of execution and an order denying a motion to enter final judgment, were held not to constitute the court's judgment; a memorandum opinion signed by the district court which adjudicated all the matters in controversy and ordered the defendant to cease and desist from certain named activities was held to constitute the district court's judgment. In *Woods* v. *Nicholas*, 163 F. 2d 615 (C. A. 10), the district court filed findings of fact and conclusions of law which concluded with the statement that (163 F. 2d at 617) "judgment will be entered against the plaintiff and in favor of the defendant. Counsel will draw up a proper form of judgment." Subsequently, the court entered a formal judgment which recited that "the action be dismissed with prejudice as of July 18, 1946 [the date of the entry of its findings and conclusions]; and that the records be corrected in accordance therewith." The Court of Appeals concluded that the findings and conclusions constituted the judgment of the district court.

In *Reynolds* v. *Wade,* 241 F. 2d 208 (C. A. 9), the district court filed an opinion which held that the complaint did not state a cause of action, and which concluded with the following sentence: "The motion for dismissal is granted and the case is dismissed." Subsequently, the district court filed a separate paper called "Judgment and Decree", which decreed that the "defendant recover attorney fees in the amount of $250.00" and, as to the plaintiff's complaint, stated as follows: "It is hereby ordered, adjudged and decreed that the complaint be and it is hereby dismissed for the reasons stated in the court's opinion of March 26, 1956." The two pertinent docket entries were as follows:

Mar. 26. Opinion filed.
April 23. Judgment filed and entered.

The Court of Appeals held that although the concluding sentence of the district court's opinion was "judgment talk", language which merely dismissed the complaint, but did not dismiss the action, did not constitute a final judgment and, accordingly, no judgment had been filed and entered in the case. Additionally, the Court of Appeals held that the entries did not include the substance of the judgment.

In the following cases the Second Circuit held that a judgment was rendered when the district court issued its opinion or memorandum. In *United States* v. *Wissahickon Tool Works,* 200 F. 2d 936, the district court issued an opinion which granted summary judgment in favor of the plaintiff. Subsequently the district court signed an "Order and Judgment" which was submitted by the plaintiff and which embodied the mandate of the opinion as well as the denial of subsequent motions to reargue. The Court of Appeals held that the granting of the motion for summary

judgment constituted the court's judgment. In *United States* v. *Roth*, 208 F. 2d 467, an opinion which concluded with the statement that motions to dismiss indictments "are granted and the Government is directed to return, to the respective defendants," their records, and "As the indictments are dismissed, it is unnecessary to consider the other motions which are directed to the indictments", was held to constitute the judgment rather than order which the court signed at a later date, which stated that the motions to dismiss "are hereby granted" and which ordered the Government to return their records to the defendants. In *Napier* v. *Delaware, Lackawanna and Western R. Co.*, 223 F. 2d 28, after a jury verdict had been rendered and entered, a motion for a new trial was filed. The Court of Appeals held that the district court's judgment became final and appealable when it issued a memorandum decision which concluded with the following: "The motion is denied in its entirety and it is so ordered," and not from a subsequently signed order which was wholly duplicative of the memorandum decision. Cf. *Edwards* v. *Doctors Hospital*, 242 F. 2d 888 (C. A. 2).

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